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OFFICE OF PETITIONS

ON PETITION

In re Application of
Lee M. Nadler et al.
Application No. 09/830,400
Filed: July 20, 2001
Attorney Docket No. 50059/007002

This is a decision on the petition under 37 CFR 1.137(b)¹, filed January 2, 2008, to revive the above-identified application.

The petition is **GRANTED**.

This application became abandoned on September 23, 2007, for failure to timely file a reply to the Final Office action mailed June 22, 2007, which set a three (3) month shortened statutory period for reply. No extensions of time under 37 CFR 1.136(a) were obtained prior to the abandonment of the application however, the instant petition and this decision precede the mailing of the Notice of Abandonment.

The present petition under 37 CFR 1.137(b) is accompanied by a Notice of Appeal and an amendment after final rejection.

The Examiner has determined that the amendment filed with the present petition does not place the case in condition for allowance. Therefore, the Notice of Appeal filed with the petition will be entered. The Notice of Appeal fee has been applied.

¹Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

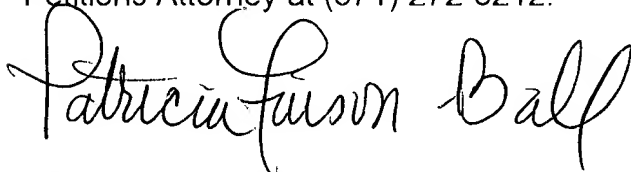
(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

Additionally, the record reveals that after the abandonment and with the instant petition to revive, a three month extension of time was filed, however, pursuant to 37 CFR 1.136, an extension of time must be filed prior to the expiration of the maximum period obtainable for reply to avoid abandonment. Accordingly, since the \$525.00 extension of time fee submitted with the petition on January 2, 2008 was subsequent to the maximum period obtainable for reply, this fee is unnecessary and will be credited to Deposit Account No. 50-0311.

The Notice of Appeal filed January 2, 2008, has been entered and made of record. Accordingly, the two (2)-month period for filing the Appeal Brief, accompanied by the fee required by law, runs from the date of this decision.

The matter is being referred to Technology Center 1644.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

A handwritten signature in black ink, reading "Patricia Faison Ball". The signature is written in a cursive, flowing style.

Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions